

Appl. No. 10/810,940
Docket No. 9191M
Amdt. dated March 31, 2010
Reply to Office Action mailed on December 31, 2009
Customer No. 27752

REMARKS

Claim Status

Claims 1-2 and 20-37 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §103(a) over Barkalow et al. in view of Yatka et al. and Leung et al.

Claims 1-7 and 9-13 were rejected under 35 USC 103(a) as being unpatentable over Barkalow et al. U.S. Patent App. No. 2002/0131990 (Barkalow) in view of Yatka et al. US Patent No. 5,458,892 (Yatka) and Leung et al. US Patent No. 6,596,298 (Leung). This rejection is traversed and reconsideration respectfully requested.

The Office Action stated Barkalow fails to teach a tooth whitening agent is included. It goes on to state that Barkalow and Leung teach pharmaceutical active ingredients may be included in the films and thus it would have been obvious to one of skill in the art to include a tooth whitening agent as they were known pharmaceutical agents used in edible films. Applicants disagree, to their knowledge, tooth whitening agents are not considered pharmaceutical agents. Additionally, assuming arguendo it is considered a pharmaceutical agent, Applicants believe the Office Action has failed to meet its burden for a *prima facie* case of obviousness as it has not given any evidence to support the assertion that whitening agents were known pharmaceutical agents used in edible films.

In order to establish a *prima facie* case of obviousness, the Office Action must show the invention, as a whole, would have been obvious to a person of skill in the art at the time of invention. MPEP §2142. As the Office Action has failed to meet its burden, Applicants submit the claims are free of the art as cited and respectfully request reconsideration.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied documents. In view of the

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foregoing, reconsideration of this application and allowance of all pending claims are respectfully requested.

Respectfully submitted,

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